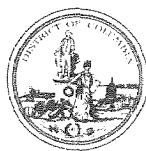


# Government of the District of Columbia

## ZONING COMMISSION



### ZONING ORDER NO. 741 Case No. 92-6 (Accessory Apartments) August 2, 1993

The Zoning Commission for the District of Columbia initiated this case in response to a request from the District of Columbia Commission on Aging and a petition from the District of Columbia Office of Planning (OP) to amend the text of the District of Columbia Municipal Regulations (DCMR), Title II, Zoning. This request came before the Zoning Commission in response to the need to provide affordable housing options for older residents of the District of Columbia, and the desire to encourage older residents to remain in familiar neighborhoods where their friends and relatives are.

Pursuant to notice, public hearing sessions were held by the Zoning Commission on September 24, 1992 and March 11, 1993, to consider regulations to allow the establishment of accessory apartments in the District of Columbia. The hearing sessions were conducted in accordance with the provisions of 11 DCMR 3021.

At the September 24, 1992 hearing session, the Commission considered the OP proposed regulations dated June 5, 1992, to define and allow the establishment of accessory apartment units in single-family structures that are located in low density residential zone districts.

At the same hearing, the Commission heard the testimony of about 18 witnesses including representatives from law firms, various citizen groups, building and realty associations, nonprofit housing organizations, and interested citizens. Some of the witnesses who testified in support of establishing accessory apartments presented written testimony proposing to modify the OP proposed regulations which constituted the basis of the public hearing. Those who testified in opposition to the regulations argued that accessory apartments would threaten the existence of single-family detached housing neighborhoods in the District of Columbia and that speculators would buy and convert single-family homes to rental units for students under the pretext of providing accessory apartments, thus thwarting the objective of the proposed regulations. The witnesses also stressed the need for additional public hearings on the issues.

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Many District of Columbia agencies, including representatives of Advisory Neighborhood Commissions (ANCs) 1D, 3D and 3C testified, while ANCs 7B, 3G and 3F submitted written statements for the record. A majority of the ANCs that participated in the case partially supported the proposal but expressed concern about the enforceability of the conditions and restrictions governing the establishment of accessory apartments. The ANCs urged the Commission to put in place enforcement mechanisms if the Commission were inclined to approve the proposed regulations. The ANCs also joined other witnesses in requesting additional hearings to further discuss the proposed regulations and their ramifications.

At the close of the hearing session, the Commission left the record open for additional written statements to be included in the record of the case, and requested the OP to investigate and address the issues that arose in the testimony during the hearing. The Commission requested that OP include its findings in the OP monthly status report for November 1992, monthly meeting.

On November 16, 1992, at its regular public meeting, the Commission reviewed and discussed the OP supplemental report dated November 10, 1992 and all written materials in the record received before the close of the record. The OP supplemental report was a response to the Commission's request during the hearing. The OP indicated that it examined the issues in question in greater detail and that it met with the Zoning Administrator, the Program Manager of the Building Inspection Division in the Department of Consumer and Regulatory Affairs (DCRA), and also spoke by telephone with other government agencies and several persons who spoke on technical aspects of the case during the hearing.

The OP report discussed; the use of the certificate of occupancy versus deed restrictions to enforce the owner-occupancy requirement; legalization of existing illegal units that comply with the adopted standards; reconvertibility, and other building code related issues; the deletion of rental units terminology since accessory apartments would not be subject to the Rental Accommodations Act; the special exception process; spacing requirements; the special exception alternative; and the 12-month owner occupancy Rule. In conclusion, the OP recommended that a further public hearing be held to ensure a full review of public comments on the technical changes that OP recommended and discussion of the general policy options which would include the matter of right spacing requirement and the option requiring a special exception for the creation of accessory apartments. The OP also furnished a modified text to be readvertised for the further public hearing.

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At that same meeting, the Commission reviewed and considered the post hearing comments and the OP supplemental report. The Commission also asked OP questions about the report and heard clarifying comments from OP and the Office of Zoning (OZ) staff. The Commission was persuaded to schedule a further public hearing for the case to consider the OP modified recommendations and to gather more public input in resolving or addressing the contentious aspects of the proposed regulations. Consequently, the Commission authorized the scheduling of a further public hearing for the case.

The OZ published a notice of the further public hearing in the District of Columbia Register on January 22, 1993, and in the Washington Times on January 26, 1993.

At the further hearing on March 11, 1993, the Commission considered two alternative provisions regarding accessory apartments; the first being an approach that would require a special exception, the second being a matter of right approach with a spacing requirement.

During this hearing session, the Commission heard the testimony of six witnesses and reviewed all written material submitted to the record since the publication of the further hearing notice. The Commission also listened to the OP presentation of its final report dated March 3, 1993. The report recommended that the establishment of accessory apartments be permitted as a special exception. At the conclusion of the hearing, the Commission left the record open for additional public comments and for other relevant information the OP might want to add to the record.

On April 12, 1993 at its regular monthly meeting, the Commission considered OP reports dated April 1 and 5, respectively. The April 1, 1993, memorandum addressed two specific issues that surfaced again during the March 11, 1993 hearing about the enforcement of the proposed regulations by the Zoning Administrator (ZA) and the provision that any request to modify more than two requirements of the regulations shall constitute a use variance. The April 5 memorandum was a summary abstract of the March 11, 1993 hearing. It summarized the various views and suggestions offered by the participants, and the OP recommended changes or modifications to the proposed regulations.

After considering and balancing all issues relative to the proposal, the Commission concluded that its decision to approve the amendment is not inconsistent with the intent of the Zoning Regulations and the Zoning Act, and is not inconsistent with the Comprehensive Plan for the National Capital.

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The Commission also determined that the recommended changes to the text of the proposed rulemaking do not alter the intent, meaning, or operation of the rules as proposed. The Commission also determined that adequate enforcement mechanisms have been provided and took proposed action to approve the regulations, as amended.

A notice of proposed rulemaking was published in the District of Columbia Register on June 11, 1993. The notice of the Commission's proposed action to amend the Zoning Regulations was also referred to the ZA for comments and to the National Capital Planning Commission (NCPD), under the terms of the District of Columbia Self-Government and Governmental Reorganizational Act.

The NCPD, by report dated June 11, 1993, found that the proposed text amendments to define, regulate and allow the establishment of accessory apartment units in R-1, R-2, and R-3 zones would not adversely affect the Federal Establishment or other Federal interest in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.

As a result of the publication of the notice of proposed rulemaking, the Commission received additional comments from Mr. Irving M. Kriegsfeld urging the Commission to streamline the procedures for obtaining Board of Zoning Adjustment (BZA) approval by not requiring the denial of a building permit before submission of an application to the BZA.

ANC-3B, by a letter dated July 21, 1993, commented on the notice of proposed rulemaking. The ANC supported the special exception procedure, but suggested that the 12-month owner-occupant requirement should be met prior to the date for application to establish an accessory apartment; that one off-street parking space be provided for each accessory apartment; that the persons occupying either the principal unit or the accessory apartment be over 65 years of age, disabled, or a relative by blood or marriage; and that the maximum number of persons limitation should not be waived unless all persons occupying the principle dwelling and the accessory apartment are related by blood or marriage.

The Commission also received comments from Ms. Melanie Mize, Single Member District Commissioner 3D07. Her comments were in opposition to the ANC-3D suggested amendments. Commissioner Melanie Mize contended that the amendments sought by the ANC are too rigid and discriminate against youths and students. She added that imposition of such stringent protective measures are capable of driving young professionals from the District of Columbia into the surrounding suburbs. She urged the Commission to ignore ANC-3D's proposed amendments.

On August 2, 1993, at its regular monthly meeting, the Commission reviewed and considered all the comments received as a result of the publication of the notice of proposed rulemaking. At the same meeting, the Commission waived its Rules of Practice and Procedure, and considered the comments of ANC-3C dated July 28, 1993, which were received after the close of the record of the case. The ANC suggested that the Commission limit the number of accessory apartment units per block and eliminate the provision that allows for BZA waivers for the total number of unrelated persons inhabiting a house.

In consideration of the reasons set forth herein, the Zoning Commission hereby orders **APPROVAL** of the amendments to the District of Columbia Municipal Regulations (DCMR), Title II, Zoning, to define, regulate and permit the establishment of accessory apartment units in single-family detached structures that are located in low density residential zone districts in the District of Columbia. The specific amendments to the Zoning Regulations are as follows:

1. Add the following definition to Section 199:

199.1 Accessory apartment - a complete apartment unit contained within a single-family detached house. It has kitchen and bath facilities separate from the principal dwelling and may have a separate entrance.

2. Renumber existing Subsections 202.9 to read 202.10, and create Subsection 202.9 to read as follows:

202.9 An accessory apartment may be added within an existing single-family detached dwelling if approved by the Board of Zoning Adjustment in accordance with the conditions specified in Section 3108 of Chapter 31 of this title, subject to the provisions of this section.

(a) The subject lot shall have a minimum lot area for the following zone districts:

- (1) 7,500 square feet for R-1-A
- (2) 5,000 square feet for R-1-B
- (3) 4,000 square feet R-2
- (4) 4,000 square feet for R-3

- (b) The house must have at least 2,000 square feet of gross floor area, exclusive of garage space;
- (c) The accessory apartment unit may not occupy more than twenty-five percent (25%) of the gross floor area of the house;
- (d) The new apartment may be created only through internal conversion of the house, without any additional lot occupancy or gross floor area; garage space may not be converted;
- (e) If an additional entrance to the house is created, it shall not be located on a wall of the house that faces a street;
- (f) Either the principal dwelling or accessory apartment unit must be owner-occupied;
- (g) The aggregate number of persons that may occupy the house, including the principal dwelling and the accessory apartment combined, shall not exceed six (6);
- (h) An accessory apartment may not be added where a home occupation is already located on the premises; and
- (i) The Board of Zoning Adjustment may modify or waive not more than two (2) of the requirements specified in paragraphs (a) through (h); provided, that:
  - (1) The owner-occupancy requirement of paragraph (f) shall not be waived;
  - (2) Any modification(s) approved shall not conflict with the intent of this section to maintain a single-family residential appearance and character in the R-1, R-2 and R-3 districts; and
  - (3) Any request to modify more than two (2) of the requirements of this section shall be deemed a request for a use variance.


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Vote of the Zoning Commission at the regular meeting on April 12, 1993: 3-0 (Tersh Boasberg, William L. Ensign and Maybelle Taylor Bennett, to approve as amended - John G. Parsons, not voting, not having participated in the case, and Lloyd D. Smith, not present, not voting).

This order was adopted by the Zoning Commission at its regular meeting on August 2, 1993, by a vote of 3-0 (William L. Ensign, John G. Parsons, and Maybelle Taylor Bennett, to adopt as amended - Jerrily R. Kress and William B. Johnson, not voting, not having participated in the case).

In accordance with 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register; that is

~~SEP 03 1993~~

  
MAYBELLE TAYLOR BENNETT  
Chairperson  
Zoning Commission

  
MADELIENE H. ROBINSON  
Director  
Office of Zoning

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